IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 219 of 1995

Date of Decision : 7.8.2007

State of H.P. & Others …Appellants.

Versus:

Dharam Singh …Respondent.

***Coram*:**

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellants: Mr. C. B. Singh, Deputy Advocate General.

For the respondent. Mr. O.P. Sharma, Sr. Advocate with Mr. Arvind Sharma, Advocate.

Sanjay Karol, J (Oral).

The present appeal was admitted on the following substantial question of law:-

> "Whether the Civil Court has no jurisdiction to try the present suit in view of the specific arbitration clause contained in the agreement especially when the dispute was fully covered by the Arbitration agreement?"

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

For the purpose of convenience, the appellants hereinafter are referred to as the 'defendants' and the respondent is referred to as the 'plaintiff'.

Plaintiff filed a suit inter alia praying as under:-

> "a) that the defendants 1 to 3 be directed to handover 86 stacked dressed stones, 40 MM and 36 Cm concrete and 2400 cubic feet sand which has been stacked by the plaintiff for the work allotted to the plaintiff by the defendants for the construction of open air Stadium at Mandhol which has been used by the defendants or in alternative to make the payment of Rs.46,910/- being the cost of aforesaid material as asserted in the plaint.
> b) that the defendants be directed to act the terms and conditions of the allotment of work against tender and to honour the entry of the MB so referred above."

According to the plaintiff, in the year 1984, vide work order dated 12.12.1984, he was awarded the work for construction of an Open Air Stadium in village Mandhol, H.P. by the defendants. Agreement Ext.DW4/A was also executed between the parties. Plaintiff arranged the entire construction material at site and started the work in December, 1984, which was carried out up to June,1985 when the defendants decided to change the size and design of the stadium and midway stop the work. Of their own, defendants started using the construction material belonging to the plaintiff at site for the completion of the work as per modified plans. Consequently, the plaintiff filed the suit with the aforesaid prayer.

Defendants filed the written statement, inter alia, taking an objection with regard to the maintainability of the suit on the ground that Clause 25 of the agreement contained an arbitration clause. On merits, the defendants admitted awarding the contract to the plaintiff and stacking of the construction material at the site. It is also admitted that midway, the Government decided to change the design on public demand. Since the plaintiff did not complete the work within the stipulated period of time, his contract stood automatically cancelled and as such the Government had to finish the work of its own.

The trial Court framed the following issues:-

"1. Whether plaintiff had stacked 86 dressed stones, 40 mm concrete, 30 cm concrete, 2400 C.F. sand for the construction of Stadium, as alleged? .....OPP

2. If issue No.1 is proved in affirmative, whether dressed stones, concrete and sand were utilized by defendants for construction work without the consent of the plaintiff, as alleged, if so its effect? .....OPP

3. Whether plaintiff has no cause of action to file the present suit, as alleged? ...OPD

4. Whether the suit is not maintainable for the purposes of court fee and jurisdiction as alleged? ...OPD.

5. Whether the court has no jurisdiction to try the suit as alleged? ..OPD

6. Relief."

Issues Nos. 1, 2 & 4 were decided in favour of the plaintiff whereas issues No. 3 & 5 were decided against the

defendants. The suit was accordingly decreed in favour of the plaintiff.

In order to prove his case, plaintiff examined S/Shri D.P. Thakur (PW-1), Dharam Singh (PW-2), Roop Singh (PW-3), Rattan Dass (PW-4 & Dila Ram (PW-5) and the defendants examined S/Shri Daya Nand (DW-1), Dilawar Singh (DW-2), Amin Chand (DW-3) & S. S. Dass (DW-4).

On merits, considering the deposition of all the witnesses, the trial Court held that the defendants' witness Shri Daya Nand (DW-1) himself had proved the plaintiff's case and that the entire construction material belonging to the plaintiff as stacked by him at site, had been utilized by the defendants for construction of the Stadium. The Stadium had to be constructed within the time bound period as the Governor and the then Chief Minister were to visit the site in the month of June, 1986. The trial Court passed a decree for a sum of Rs.46,910/- with a direction that the plaintiff shall pay the deficient court fee within a period of 30 days from the date of decree. On the issue of maintainability of the suit in view of the clause 25 of the agreement, the Court held that no efforts were made by the defendants for referring the dispute to the arbitration inspite of the fact that the plaintiff had been knocking the door of he defendants for many years and requesting them to settle the dispute. Therefore, it could not be said that the jurisdiction of the Court was barred.

Aggrieved by the same, the defendants preferred an appeal before the District Judge, Shimla who in terms of its judgment dated 1.12.1994 in C.A. No. 122-S/13 of 1993 titled as State of HP & others vs. Dharam Singh upheld the finding of the trial Court on merits and in law.

I have seen the order sheets passed in the suit and from the same, it is evident that the suit was instituted on 2.12.1989 when, notice in the suit was issued to the defendants. On 15.1.1990, 10.4.1990, 24.4.1990, 25.5.1990, 24.7.1990, 21.8.1990 & 22.9.1990, the matter was adjourned as the parties were reconciling their dispute amicably.

Order dated 23.11.1990 records that conciliation was not possible and the matter was adjourned for filing of written statement on 29.12.1990, when the same was filed.

Clause 25 of the agreement Ext.DW-4/A, provides for the resolution of dispute through arbitration. The contract including the said clause does not bar the jurisdiction of the Civil Court. It has come on record and as has already been held by the trial Court that plaintiff has been knocking the door of the defendants for settlement of his claim. However, no steps were taken by the defendants for either resolving the dispute or referring the matter to arbitration as was sought by the plaintiff and was required to be done by the defendants. Since no steps were taken, plaintiff was left with no alternate remedy but to

institute the present proceedings before the Civil Court for resolving his dispute.

In any event, from the order sheets, it is clear that the defendants had submitted to the jurisdiction of the court and had taken steps in the proceedings by filing the written statement and also participated in the same by leading its evidence and contesting the suit on merits. Prior to the filing of the written statement on the joint assurances and requests of the parties, the matter was adjourned on several occasions for reconciliation. At no stage, the objections with regard to the jurisdiction or resolution of dispute through arbitration was ever raised by the defendants. The defendants did not take any steps, even during the pendency of the suit for getting the matter referred to the arbitration or seeking stay of the proceedings under the provisions of the Arbitration Act, 1940. It did not express its readiness and willingness to get the dispute resolved through the process of arbitration.

In my view, therefore, the Civil Court rightly examined the jurisdiction vested in it, to entertain the suit. There is no bar in the agreement barring the jurisdiction of the Civil Courts, therefore, the substantial question of law as mentioned aforesaid is answered accordingly. I must place on record the fairness shown by the learned Deputy Advocate General in not disputing the merits of the claim in view of the concurrent findings of fact given by the Courts below.

Pursuant to the order dated 6.12.1995, defendants had deposited the decretal amount before this Court, which was directed to be kept in the shape of fixed deposit receipt. Rs.25000/- had been directed by the Court to be released to the plaintiff without security. I am told at the bar that the balance amount is lying with the Registry of this Court. It is directed that the entire balance decretal amount, along with interest, be released to the plaintiff and transmitted to his bank account, details whereof shall be furnished by the learned counsel for the plaintiff within one week from today.

The appeal is accordingly dismissed.

August 7, 2007. **(Sanjay Karol)**
(rana) **Judge.**